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STATEMENT OF CONGRESSMAN ED CASE OF HAWAII WEDNESDAY, FEBRUARY 17, 2005

THE INTRODUCTION OF THE COMPASSIONATE VISITOR VISA ACT

Mr. Speaker, I rise today to reintroduce my bill from the 108th Congress that will provide greater flexibility in issuance of temporary visitor visas to the alien relatives of citizens in urgent and compelling circumstances involving those citizens such as life-threatening or terminal health conditions or memorial services. In doing so, we will assure that our own brothers and sisters are provided basic compassion and family unity in their time of need.

The post-9/11 world demands that our immigration policy ensure our national security. So let me say up front that nothing in this bill forecloses U.S. consular prerogatives in that regard.

However, after this prerequisite has been met, we need to provide for a greater accommodation than current law and practice allow of immediate and urgent needs of our own fellow citizens for relatives seeking temporary admission due to extenuating circumstances.

Specifically, my bill allows such applicants to overcome the statutory presumption against immigration for a brief stay occasioned by a demonstrated and immediate family obligation or need involving a parent, child, sibling, grandchild, or grandparent.

My office has been involved in numerous cases in which many of my constituents were left heartbroken at the news of a nonimmigrant visa denial for such occasions as to attend a funeral or visit a terminally ill family member. There are also instances where the immediate relative of a

U.S. citizen or legal permanent resident has been denied entry into our country to donate a matched organ to a family member.

These families were willing to purchase plane tickets, arrange for accommodations, in short everything anyone of us would do for a visiting loved one. Temporary visa applicants had documentation to prove that they had every reason to return to their country of origin: they maintained homes, businesses, bank accounts, and had other family members, often small children, that would remain behind. Yet it was to no avail, and families were left separated for important, often life-changing, events.

These are some examples:

The parents of a 27-year-old U.S. citizen who was murdered by her husband were barred from attending her funeral, which had to go on without them. They were thereby prevented from then comforting their 5-year-old granddaughter. All told, they have made over a half-dozen 18-hour bus rides to the U.S. Embassy in Manila to obtain travel visas, only to have their applications turned down every time as they were deemed to not have sufficiently strong ties to their own country.

A terminally ill naturalized U.S. citizen who has not seen any of her siblings for more than 20 years wanted to see just one of them one last time. A sister had applied for a nonimmigrant visa to be able to visit and care for her sibling and, in the process, would voluntarily leave be-

hind her own husband and young children in the Philippines for this purpose. Unfortunately, her visa application was recently denied. The main reason cited was that her husband's income was too modest and she was not currently employed.

A recent article in the Honolulu Advertiser detailed the gripping story of Francisco Guerrero, a U.S. citizen who for the past 6 years has had to undergo dialysis treatment for several hours three times a week in Honolulu, while in the Philippines, his son Glenn, not a U.S. citizen, is willing to donate a life-saving kidney that is considered a near-perfect match. Yet Glenn has been denied a temporary visa to visit the U.S. for the operation because our consulate has determined he does not have a demonstrated intent to return to his country thereafter. I include the text of that article at the end of my remarks today.

These are compelling stories of a well-intentioned Federal immigration policy gone very wrong. I suspect that many of you have similar stories affecting families in your district.

Again, the problem these stories graphically illustrate and the solution my bill offers have nothing to do with preserving our homeland security. These applicants were subject to a security review like other applicants, and nothing in the Compassionate Visitor Visa Act would alter that.

The reason for the rejection of such applications lies instead in the application of the presumption clause in current immigration law. In practice, applicants for nonimmigrant visas are presumed to be at risk of defaulting on their visas and remaining in our country illegally unless they can affirmatively prove that they will return to their countries. In the cases above, the applicants provided documentation to overcome this presumption and demonstrate they had every reason to return to their country of origin: they maintained homes, businesses, bank accounts, and would leave other family members, often children, behind, but to no avail.

The Compassionate Visitor Visa Act says that the presumption clause, as applied to close fam-

ily members of U.S. citizens or legal permanent residents that are seriously ill or who have died, is wrong and should be changed. It is focused on the wants and needs not of the applicant, but our own fellow citizens.

Opponents of the bill may argue that the result would be to detract from homeland security and enhance the default rate on nonimmigrant visas. First, again nothing in this bill changes or compromises procedures designed to identify and weed out security threats, so that cannot be used as an excuse to avoid the focus of this bill. Second, this bill does not say that consular officers cannot consider evidence of applicants' willingness to honor visa terms and return to their countries, but it does say that the deck won't be virtually impossibly stacked against them from the get-go. And third, this bill applies only in the narrow case of an applicant whose close family member has a serious illness or has died or has some other similar family emergency, as demonstrated by proof to the satisfaction of the consular officers.

I stand here today willing to take the chance of loosening the standard for those most in need because it is the right thing to do. Our U.S. consulates are not entitled to deny an American his or her life. I urge passage of the Compassionate Visitor Visa Act.

[From the Honolulu Advertiser, Feb. 13, 2005]

DENIAL OF VISA STYMIES FILIPINO ORGAN DONORS

(By Frank Oliveri and Vicki Viotti)

For six years, Francisco Guerrero has had his blood cleansed by a machine for several hours three times a week at St. Francis Medical Center in Honolulu because his kidneys have failed.

In the Philippines, his son, Glenn, studies architecture and waits with a life-saving kidney that is considered a near-perfect match for his father. But the U.S. government won't grant the 28-year-old a temporary visa because he can't prove he'll return to the Philippines.

The U.S. Consulate in Manila says the Lawag City resident fits the profile of an undesirable visitor--someone who poses a risk of overstaying a temporary visa because of his background and his homeland's tenuous situation.

Glenn Guerrero has only a part-time job, is relatively poor and already has a pending application to emigrate to the United States.

The Guerreros' plight is not uncommon at St. Francis, the only organ transplant center in the Central Pacific. There are at least 15 Filipino patients there who face the same bureaucratic roadblocks to getting a visa for an organ donor, and all have been rejected. They have all but given up hope of bringing their relatives to the United States for the life-saving surgery. No patients are known to have died while trying to cut the red tape after finding a donor match. But hospital officials said many Filipinos have a rare blood type and die while waiting for a kidney because they never find a match.

The issue, according to interviews with immigration experts, hospital staff, patients and their families, is the intense scrutiny of the visa applications from potential Filipino organ donors since the Sept. 11, 2001, terrorist attacks.

Before 9/11, St. Francis successfully processed about three visa applications a year to bring organ donors to the states. Since then, the immigration laws have stayed the same but officers at the consulate who review applications have gotten tougher. They search for clues giving them reasonable assurance that the organ donors will return to the Philippines.

"We don't determine between a medical visit or a trip to Disneyland," said Kelly Shannon, spokeswoman for the Bureau of Consular Affairs at the U.S. State Department. "Congress wrote the law, and it is virtually unchanged since 1952. It requires the assumption of an intention to emigrate. You have to show a reason to compel your return home."

Francisco Guerrero, 59, does not understand why Glenn's intent to save his father's life isn't

enough to support the younger man's visa application.

"Sometimes they should try to be more understanding of the situation," the elder Guerrero said. "I think these people don't care. They should think of the purpose of the person who is coming here."

Key Issues for Filipinos

There are 389 other patients in Hawai'i who are waiting for a kidney--a wait that can last up to seven years. More than 100 of those patients were born in the Philippines.

U.S. Consulate officials say Filipinos are treated in the same way as any other foreign nationals who wish to come to the United States on a temporary visa. But with few systems in place to track visitors once they have arrived and note when they have departed, overworked officers at the consulate are often the only line of defense against unwanted visitors.

"They have gotten tougher," said Jessica Vaughan, a former chief consular official at the U.S. Consulate in Port of Spain, Trinidad. Vaughan is now a senior policy analyst for the Center for Immigration Studies in Washington.

The law requires consular officials to assume that every applicant hopes to move to the United States permanently, according to Vaughan. It places the burden on the applicants to prove they would return to their home country.

The issue is complicated for Filipino organ donors because:

Many applicants are poor, with little property and money or a good job to return to in the Philippines.

Filipinos already are one of the largest groups seeking permanent visas to the United States. Any person seeking a temporary visa, who also has requested a permanent visa, faces likely rejection for a short stay. In some cases, officials are so backlogged in reviewing visas that only

now are they considering applications dating back to 1990.

There are already an estimated 85,000 Filipinos who live illegally in the United States. Officials say it is likely that most of them simply overstayed their temporary visas.

Hawai'i lawmakers have asked the State Department to look into the organ donor cases at St. Francis.

Rep. Ed Case, D-Hawai'i, said he plans to reintroduce a bill to remove any presumption that an applicant intends to stay in the United States if they are coming here for family emergencies. Rep. Neil Abercrombie, D-Hawai'i, co-sponsored the bill when it was first introduced in late 2003.

Hawai'i's two senators have written letters to the State Department asking officials there to take a close look at the problem.

"I'm willing to take the chance of loosening the standard because he or she has demonstrated his or her mother is going to die on the island of Maui," Case said. "It is the right thing to do."

Case said he supports keeping the borders safe. But the current law "puts a disproportionate burden on the Filipino community and that's not fair," he said. The U.S. Consulate, Case said, is "not entitled to deny an American his or her life." Expenses, long waits

Since 9/11, the total number of all types of visas granted in the United States has declined because there have been fewer applicants.

Vaughan, the former consular official, stresses that each application is evaluated one at a time.

"It's not discrimination," she said. "It may be that more people qualify from Japan than in the Philippines. The conditions in that country--economic, social or political conditions--are factored into the consular officer's decision."

Although the Philippine government has taken an interest in the transplant patients at St. Francis and their families, one official concedes there

isn't much it can do.

"We cannot intervene," said Eva Ditita, Philippines deputy consul general. "We can help on the Philippine side and facilitate their papers, but the ball is on the (U.S.) State Department side. This is a humanitarian undertaking."

Complicating matters is the lengthy--and expensive--application process. Cathy Bailey, transplant evaluation coordinator at St. Francis, said it takes about a year to compile all the medical information required for a kidney donor in another country, compared with about three months for a donor in the United States.

The U.S. government also requires a long list of documents, from income-tax returns and bank statements, to prove the kidney recipient can support the organ donor for the six months they are required to stay in the United States.

Tissue and blood tests for each potential donor cost about \$3,500, and the results are good for only a few months before they must be performed again, Bailey said. The donor also must pay for travel to Manila for an interview with U.S. Consulate officials and pay for hotel expenses while there as well as for medical tests and doctors' fees.

She said most kidney patients rely on Medicare to pay for the surgery, which costs about \$200,000, and for about \$30,000 worth of drugs annually to ensure the body does not reject the donated organ. Patients don't travel to the Philippines for the surgery because Medicare would not cover drug costs upon their return.

"They almost always come to me crying," Bailey said. "It's not like I can do anything. It is very costly for these people."

Lahaina woman's plight

Hilaria Taborada, a 51-year-old Lahaina cashier, has spent a lot of money on medical tests and visa fees and untold hours worrying about her future ever since she was diagnosed with kidney failure in 1999.

One nephew was determined to be a good match as a donor but was too ill to undergo the surgery; a visa application by another nephew was rejected in December because it was deemed that he had no compelling reason to return home.

Taborada undergoes dialysis at home, but still must travel to the hospital for frequent tests.

“How many times I’m going back and forth to the hospital,” she sighed. “I always have infections.” Taborada’s brother is transferring his own property to the nephew in the hope that the U.S. government will recognize the property as a reason for the nephew to return to the Philippines.

Vaughan said that when she worked for the U.S. Consulate in Trinidad, the refusal rate for nonimmigrant visas for people from that West Indies nation (Trinidad and Tobago) was 50 percent. She said most of the people she dealt with had similar backgrounds as those Filipinos seeking temporary visas.

Officers do the best they can, based on the information and time they have available,” she said. But “it’s a very imperfect science.”